



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 16, 2016

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Jesse J. Kibert, R.P.A.



Re: License No. 014002

Dear Mr. Kibert:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-408. This order and any penalty provided therein goes into effect December 23, 2016.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,



Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Robin B. Phelan, Esq.
Phelan, Phelan & Danek, LLP.
300 Great Oaks Blvd., Suite 315
Albany, New York 12203

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 16-408

IN THE MATTER
OF
JESSE J. KIBERT, P.A.

CONSENT
ORDER

Upon the application of (Respondent) JESSE J. KIBERT, P.A. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and

it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board,
either

by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,
whichever is first.

SO ORDERED.

DATE: 12/14/2016


ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JESSE J. KIBERT, P.A.

CONSENT
AGREEMENT

JESSE J. KIBERT, P.A., represents that all of the following statements are true:

That on or about May 13, 2010, I was licensed to practice as a physician in the State of New York, and issued License No. 014002 by the New York State Education Department. I am not currently registered with the New York State Education Department

My current address is [REDACTED].

Effective January 1, 2017, it will be [REDACTED], and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I do not contest the third specification, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(2), my license to practice as a physician assistant in New York State shall be suspended until I satisfy the following conditions:

That I shall successfully complete the Physician Assistant National Certification Exam, necessary CME credits and satisfy any other requirements necessary to qualify me for re-registration with the New York State Education Department (NYSED); and

That I shall obtain and successfully complete to the satisfaction of the Director a clinical competency assessment by a program for such assessment, as directed by the Director and cause a written report of such assessment to be submitted to the Director and submit a remediation plan consistent with the recommendations of the assessment pursuant to paragraphs 7 and 8 of Exhibit "B", to the approval of the Director.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for thirty-six months, subject to the terms set forth in attached Exhibit "B."

I shall be subject to a Condition that I not practice as a physician assistant in an emergency department setting.

I shall be subject to a Condition that I comply with attached Exhibit "C,"
"Requirements For Closing a Physician Assistant Practice Following a
Revocation, Surrender, Limitation or Suspension (Of 6 Months or More) of a
Physician Assistant License."

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall comply with each and every penalty imposed by this
Order pursuant to N.Y. Pub. Health Law § 230-a; and

That Respondent shall remain in continuous compliance with all
requirements of N.Y. Educ Law § 6502 including but not limited to the
requirements that a licensee shall register and continue to be registered with
the New York State Education Department (except during periods of actual
suspension) and that a licensee shall pay all registration fees. Respondent
shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid
registration and payment of fees. This condition shall take effect 120 days
after the Consent Order's effective date and will continue so long as
Respondent remains a licensee in New York State; and

That Respondent shall provide the Director, Office of Professional
Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355,
Albany, New York 12204-2719, with the following information, in writing, and
ensure that this information is kept current: a full description of Respondent's

employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order.

Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 12/7/16


JESSE J. KIBERT, P.A.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 12/1/14


ROBIN BARTLETT PHELAN, ESQ.
Attorney for Respondent

DATE: 12-8-16


LEE A. DAVIS
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 12/14/16


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

JESSE J. KIBERT, P.A.

STATEMENT
OF
CHARGES

JESSE R. KIBERT, P.A., the Respondent, was authorized to perform medical services as a Physician's Assistant in New York State on or about May 13, 2010, by the issuance of license number 014002 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent purportedly treated Patient A (Patients are identified in the attached Appendix A), a thirty-three year old woman when treated at the Massena Memorial Hospital Emergency Department (ED) in Massena, New York for a needle stick injury she sustained while working at Massena Memorial Hospital on or about April 13, 2013. Respondent's medical care of Patient A deviated from accepted standards of care as follows:

1. Respondent on or about January 11, 2012 failed to obtain and/or document an adequate medical history of Patient A.
2. Respondent on or about January 11, 2012 failed to perform and/or document an adequate physical examination of Patient A.
3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient A.

B. Respondent provided medical care to Patient B, a twenty-two year old woman when treated at the Samaritan Medical Center ED in Watertown, New York on or about January 11, 2012. Respondent's medical care of Patient B deviated from accepted standards of care as follows:

1. Respondent failed to obtain and/or document an adequate medical history of Patient B.
2. Respondent failed to perform and/or document an adequate physical examination of Patient B.
3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient B.

C. Respondent purportedly treated Patient C, a nineteen year old man when treated at the Massena Memorial Hospital ED in Massena, New York on or about May 7, 2013. Respondent's medical care of Patient C deviated from accepted standards of care as follows:

1. Respondent failed to obtain and/or document an adequate history of Patient C.
2. Respondent failed to perform and/or document an adequate physical examination of Patient C.
3. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient C.

D. Respondent submitted an "Application for Health Affiliate Appointment and Clinical Privileges" to the A.O. Fox Memorial Hospital ("A.O. Fox Application") in Oneonta, New York on or about June 6, 2013.

1. Respondent, on his A.O. Fox application, dated and signed by the Respondent on or about "6/6/13," was requested, at "IV. Institutional Affiliations, A" to "List in chronological order all institutional affiliations (past and present) since completion of postgraduate e[word(s) cut off in photocopy received] includes all

hospitals, corporations, military assignments or government agencies. Attach copy (ies) of pri [word(s) cut off in photocopy received] completed application."

Respondent, in response to this question, indicated that his last employment was at Samaritan Medical Center in Watertown, New York, ending in "3/2013."

2. Respondent, on his A.O. Fox application, dated and signed by the Respondent on or about "6/6/13," listed as his past clinical experience:

Respondent stated in his listing of past clinical experience that he worked at Samaritan Medical Hospital through "05/1/10 - current".

Respondent failed to list his employment/affiliation with Massena Memorial Hospital in his listing of past clinical experience.

3. Respondent, on his A.O. Fox application, dated and signed by the Respondent on or about "6/6/13," submitted his Curriculum Vitae with his application, which summarized his "Professional Experience":

Respondent failed to list his employment/affiliation with Massena Memorial Hospital.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

1. The facts in paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, and/or C and C.2.

SECOND SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

2. The facts in paragraphs D and D.1, D and D.2, and/or D and D.3.

THIRD SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

3. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, and/or C and C.3.

DATE: December 8, 2016
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

- 1) Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 3) The probation period shall toll when Respondent is not engaged in the active practice as a physician assistant in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, the active practice as a physician assistant in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- 4) The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 5) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- 6) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

CLINICAL COMPETENCY ASSESSMENT

- 7) Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall

complete the assessment to the satisfaction of the Director of OPMC, and shall cause a written report of such assessment to be provided directly to the Director of OPMC.

- a) Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full payment of all costs that may be charged. This term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy shall provide a basis for a Violation of Probation proceeding.

- 8) At the direction of the Director and within 60 days following the completion of the clinical competency assessment (CCA) the Respondent shall identify a Preceptor, preferably a physician who is board certified in the same specialty, to be approved in writing, by the Director of OPMC. The Respondent shall cause the Preceptor to:
 - a) Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies /retraining recommendations identified in the CCA. Additionally, this proposal shall establish a timeframe for completion of the remediation program.
 - b) Submit progress reports at periods identified by OPMC certifying whether the Respondent is fully participating in the personalized continuing medical education program and is making satisfactory progress towards the completion of the approved remediation plan.
 - c) Report immediately to the Director of OPMC if the Respondent withdraws from the program and report promptly to OPMC any non-compliance by the Respondent.
 - d) At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by the Respondent toward remediation of all identified deficiencies.
- 9) Respondent shall be subject to any further terms of probation as may be imposed by Director, as the Director deems necessary based upon the outcome of the Clinical Competency Assessment. Respondent, by making this Application, stipulates that the Director shall be so authorized.
- 10) Respondent shall be solely responsible for all expenses associated with these terms, including fees, if any, for the clinical competency assessment, the personalized continuing medical education program, or to the monitoring physician.

PRACTICE MONITOR

- 11) Within thirty days of the Consent Order's effective date, Respondent shall practice as a physician assistant only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any practice as a physician assistant in violation of this term shall constitute the unauthorized practice as a physician assistant.
 - a) Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's physician assistant practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether Respondent's physician assistant practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c) Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- 12) Respondent shall enroll in and successfully complete a continuing education program in ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 90 days of the probation period.
- 13) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

EXHIBIT "C"

Requirements for Closing a Physician Assistant Practice Following a Revocation, Surrender, Limitation or Suspension of a Physician Assistant License

1. Licensee shall immediately cease and desist from practice as a physician assistant in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice as a physician assistant.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice as a physician assistant in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's physician assistant practice, and shall refer all patients to another licensed practicing physician assistant for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased practice as a physician assistant. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's practice as a physician assistant.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

EXHIBIT "C"

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice as a physician assistant, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in practice as a physician assistant. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to practice as a physician assistant, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice as a physician assistant when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.